

# BOARD OF ADJUSTMENT REPORT



MEETING DATE: 9/7/2005

ITEM No. \_\_\_\_\_

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT Groman Variance for Wall  
**(7-BA-2005)**

**At the request of the applicant this case was granted a continuance at the August 3, 2005 hearing.**

REQUEST Request to approve a Variance from Article V. Section 5.304.G.1 regarding wall heights in the front yard on a parcel located at 29695 N 75<sup>th</sup> Place.

OWNER/APPLICANT Kevin and Jennifer Groman  
CONTACT 602-319-1247

LOCATION 29695 N 75th Pl

CODE ENFORCEMENT None  
ACTIVITY

PUBLIC COMMENT There has been correspondence from the neighbors in support of the wall within the setback. There have also been questions regarding the background of this case.



ZONE The site is zoned Single Family Residential, Environmentally Sensitive Lands, Foothills Overlay (R1-70 ESL /FO) zoning district.

ZONING/DEVELOPMENT The site is approximately 95,500 square feet and is located near the southwest corner of Dixileta Drive and 76<sup>th</sup> Street. This site abuts streets along the west side of the property (75<sup>th</sup> Place) and the east side of the property (76<sup>th</sup> Street). Therefore, this site technically has two front yards (one along 75<sup>th</sup> Place and one along 76<sup>th</sup> Street). The property has an irregular shape, and there are washes on the north and south sides of the property.

CONTEXT

This property was not part of a traditional subdivision, but was created through the lot split process in 1996 (original parcel divided into 3 lots). At that time, a 40-foot wide half street was dedicated on Dixileta Drive and 76<sup>th</sup> Street. In 1997 another property division created an additional two lots. The 5 lots are developed and have access from Dixileta Drive through an internal roadway terminating in a cul-de- sac.

ORDINANCE  
REQUIREMENTS

- Section 5.034.E.1. Front Yard.
- a. There shall be a front yard having a depth of not less than sixty (60) feet.
  - b. Where lots have a double frontage on two (2) streets, the required front yard of sixty (60) feet shall be provided on both streets.

**Section 5.034.G.1 regarding walls. Walls, fences, and hedges shall not exceed 3 feet in height on the front property line or within the required front yard.** A wall or fence is any structure for screening purposes forming a physical barrier, which is so constructed that fifty (50) percent or more of the vertical surface is closed and prevents the passage of light, air and vision through said surface in a horizontal plane. This shall include concrete, concrete block, wood or other materials that are solids and are so assembled as to form a screen.

Section 6.1003.B.4.c. A corral fence not exceeding 6-feet in height shall be permitted on the property line or within any yard, except that no corral fence may be placed within 10 feet of any street right of way or a dedicated public trail easement of pathway easement. A corral fence is a fence-type structure consisting of vertical and horizontal members, and so constructed that 75 percent or more of the vertical surface is open. (Section 3.100.)

DISCUSSION

The applicant requests a 6-foot tall solid block wall within the 60-foot front yard setback along 76<sup>th</sup> Street. The lot has double frontage, thereby restricting the construction of a solid block wall over 3 feet within 60 feet of the rear property line. Unlike traditional subdivisions that separate rear yards from roadways with landscape tracts, lots created by the lot split process are not generally provided with such tracts. This is a request to approve a Variance from Section 5.304.G.1 regarding wall heights in the front yard.

The purpose of considering both frontages as front yards prevents buildings and tall walls from locating on any property line shared with a street, which allows open street corridors for visibility and safety. In subdivisions, landscaped tracts usually separate rear yards from roadways to create open street corridors for visibility and safety.

The property has an irregular shape, there are washes on the north and south sides of the property, and natural area open space (NAOS) within the rear and southern side yards. The applicant wishes to provide patio, pool, and spa improvements in the rear yard and relocate the existing rear yard NAOS elsewhere on the property (over an existing wash). The pool and spa area requires a wall over 3 feet for the purpose of health and safety.

## FINDINGS

- 1. That there are special circumstances applying to the property referred to in the application, which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The property has an irregular shape, and there are washes on the north and south sides of the property. Due to the irregular shape of the lot, the existing house was uncharacteristically located towards 76<sup>th</sup> Street by the previous owner. If the lot was developed within a subdivision, a landscape tract would likely have been dedicated along the 76<sup>th</sup> Street frontage, which would then allow a solid block wall along the rear property line. The lot shape and washes restrict the location of site improvements to the rear of the house.

The applicant indicates that from Dixileta Road to Dynamite Boulevard, and Scottsdale to Pima Roads, there are approximately 301 parcels of which 113 are unimproved, every one of the remaining 183 lots have homes with significant backyards except for 2 churches; one yard that can not be ascertained, one yard, and the applicant's yard. In addition the applicant indicates that he has two front yard setbacks at 60 feet, a large wash along the north side yard, and NAOS along the south side yard that inhibits the ability to have a wall within the rear yard that is considered a front yard because of the 76<sup>th</sup> Street frontage. As a result of all the foregoing, the applicant indicates that his home is the only home in the entire area that has insufficient space for a backyard (16 feet) because of the inability to construct a solid block wall over 3 feet to enclose a proposed pool and active family area.

- 2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:**

The applicant indicates that the neighborhood consists of homes ranging from 4,000 to 5,000 square feet, with each unit sitting on more than an acre of land. Each home has an enclosed backyard of at least 80 feet, but some as much as 146 feet, and all include a pool, grass/play area, barbeque, etc... The existing 16-foot backyard (which is smaller than many patio home backyards) does not enable the same use and enjoyments as do the neighbors have. In addition, the applicant indicates his property rights are significantly and negatively impacted by his current situation.

All lots along the street and cul de sac, as well as others within the community have or have the ability to enjoy backyards that include pool and entertainment areas. The construction of a wall within the required front yard setback will allow the applicant to enjoy the same privileges as his neighbors.

- 3. That special circumstances were not created by the owner or applicant:**

The applicant indicates that the need for his variance arises solely

from the location on the lot in which the home was approved and built, and that the home should have never been built so deep on the lot. All other homes in the community are set back between 50 to 100 feet from the front of the lot. The applicant's home is set back over 200 feet from the front of the lot. The applicant states that he purchased the home that was sitting vacant for 3 years, from the bank that repossessed the home. The way the home was approved and built, it enabled the homeowner to have a 6-foot backyard, while sitting on more than 2 acres of land.

Staff acknowledges that the house was uncharacteristically located towards 76<sup>th</sup> Street by the previous owner, and that if the lots were developed as a subdivision, the double frontage lot would likely to have been eliminated by a landscape tract.

**4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:**

The applicant indicates that he has met with numbers of neighbors about his effort to achieve a backyard, and every neighbor immediately adjacent to his home signed a document in support of his efforts to build a solid block wall within the required front yard. In addition the applicant states that some neighbors, some who became outspoken proponents, wanted at least a 15-foot space between the proposed wall and the horse trail. If the variance is granted, the horse trail from its current location will be more than 40 feet from the proposed wall. The applicant indicates that many neighbors have expressed more concern regarding him not having a yard up to the aesthetics of the neighborhood, than any other concerns.

Staff acknowledges that the construction of a solid block wall within the required front yard setback will have no significant impact on persons residing in the vicinity, to adjacent property, to the neighborhood, or public welfare in general. The applicant has abandoned 10-feet of 76<sup>th</sup> Street with a stipulation by City Council that the 10-feet is dedicated as an access easement. The 10 foot access easement will serve as a buffer between the proposed wall and the trail location as per the trail master plan as well as Section 6.1004.B.4.c of the Foothills Overlay. The portion of 76<sup>th</sup> Street that is currently used by the equestrian community for a trail is located along the eastern boundary of that street right of way, which is located 50 feet from the applicant property frontage.

## STAFF CONTACT

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Report Author  
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E-mail: [Gwilliams@ScottsdaleAZ.gov](mailto:Gwilliams@ScottsdaleAZ.gov)

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Tim Curtis, Project Coordination Manager  
Phone: 480-312-4210  
E-mail: <mailto:TCurtis@ScottsdaleAZ.gov>

## ATTACHMENTS

1. Project Narrative and Justification
2. Context Aerial
3. Aerial Close-up
4. Zoning Map
5. Current Site Plan
6. Proposed Site Plan
7. Landscape Plan

## **Project Narrative:**

I am a Scottsdale property owner who is working hard to create a backyard for my family. My home is located at 29695 N. 75<sup>th</sup> Place, in the beautiful Foothills area of North Scottsdale. Our home was built deep on our lot of over 2 acres, and it should have never been approved or built in the location that it was. After sitting vacant for three years and being repossessed by the bank, I purchased the home in an “as is” condition. Unfortunately, the home had numerous issues with its construction, such as when I purchased the home it had 66’ between the back of our house and the property line. This resulted in our ability to have a 6’ backyard, due to our having 2 front yard setbacks (60’) since our property abuts to 2 roads.

As a result, I have been working with City Staff, and together we developed a staged plan that would hopefully enable us to reach our goal of having **the security** that a wall over 3 feet (like 6’) provides, due in part to the fact that our house has already had an attempted break-in, **the privacy** since people wave to us as we are sitting at our kitchen table, on our couch or on our beds, and **the enjoyment and livability** of our backyard, no different than that which all our neighbors enjoy.

This staged plan first consisted of seeking an abandonment of 10’ of right of way, which was granted by the City Council with a 7 to 0 vote in favor. This now enables us to have a 16’ backyard.

The next step in our effort was to redirect the NAOS to a more meaningful location, from our backyard to the side yard where the wash exists. Also in connection with this effort we will grant the city a drainage easement where the wash exists. We have begun the paper work to make this second step a reality.

This application for a zoning ordinance variance is the third and hopefully final step in our effort that will then finally enable us after 18 months to begin landscaping our yard. **We are seeking a variance to build a wall greater than 3’ within our front yard setback for the purpose of having a backyard for family enjoyment with a pool, patio, play area, etc...** This will enable our family to improve our situation by allowing us property rights that are more in line with (but still quite a bit less than) what every single one of our neighbors currently enjoys.

## **Justification For Variance:**

1. **Special circumstances/conditions exist which do not apply to other properties in the district:**

From Dixileta to Dynamite & Scottsdale Road to Pima, there are approximately 301 parcels of which 113 are unimproved, every one of the remaining 183 lots have homes with significant backyards except for 2 churches, 1 yard that can not be ascertained, 1 small yard, and me (see Exhibit A). In addition, we are the only home that has 2 front yard setbacks (60’) and a large wash on the north side that

essentially eliminates the ability to have a backyard (see Exhibit B). As a result of all of the foregoing our home is the only home in the entire area that has insufficient space for a backyard (now it is 16'), and the home should have never been situated on or approved for building the lot the way it was.

2. **Authorizing the variance is necessary for the preservation and enjoyment of substantial property rights:**

Our neighborhood consists of homes ranging from 4,000 to 5,100 square feet, with each sitting on more than an acre of land. Each home has a backyard of at least a minimum of 80' in depth, but some with as much as 146', but all include a pool, grass/play area, barbeque, etc... Our 16' of backyard (which is smaller than many patio home backyards) does not enable the same use and enjoyments as do our neighbors have. In addition, our property rights are significantly and negatively impacted by our current situation.

3. **Special circumstances were not created by the owner or applicant:**

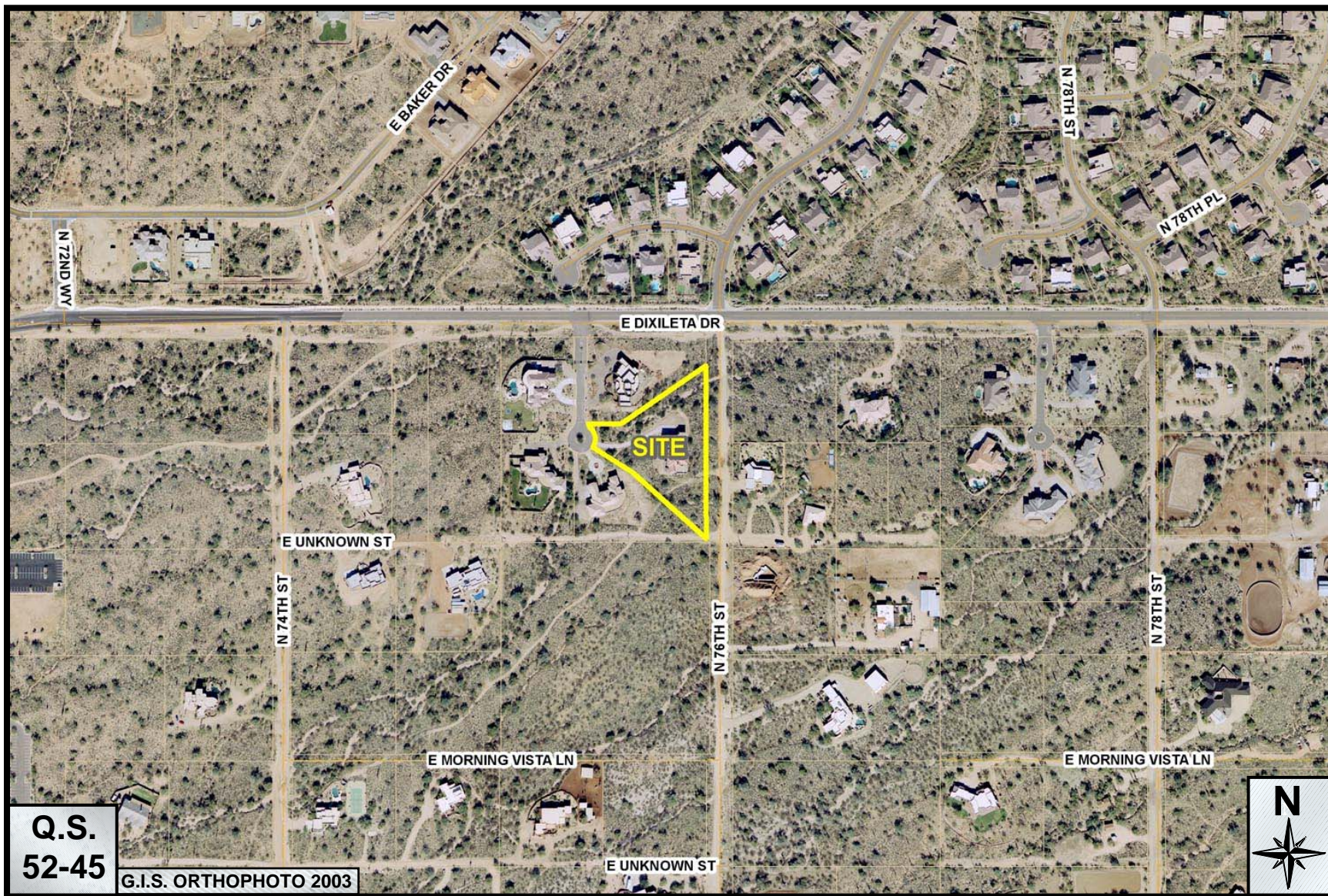
The need for this variance arises solely from the location on the lot in which the home was approved and built; quite simply the home should have never been built so deep on the lot. All other homes in the community are set back between 50 to 100 feet, our home is set back over 200 feet. We purchased the home (it was sitting vacant for 3 years) from the bank that repossessed the home. It was sold "as is" so the seller made no disclosure of these issues. The way the home was approved and built, it enabled the homeowner to have a 6' backyard, while sitting on more than 2 acres of land.

4. **Authorizing the application will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare in general:**

I have met with numbers of neighbors about my effort to get a backyard, and in fact every neighbor immediately adjacent to our home signed a document in support of our efforts. In addition, some neighbors on the periphery were initially interested in our effort and once they came to my home, these neighbors all became outspoken proponents of our efforts. Our effort will not negatively impact horse owners, a couple of neighbors (some of whom became outspoken proponents) wanted at least a 15' space between my wall and the horse trail, and if you grant this variance the horse trail from its current location will be more than 40' away from the wall I would like to build.

In fact, many neighbors have expressed more concern regarding our not having a yard up to the aesthetics of the neighborhood, than any other concerns.





Q.S.  
52-45

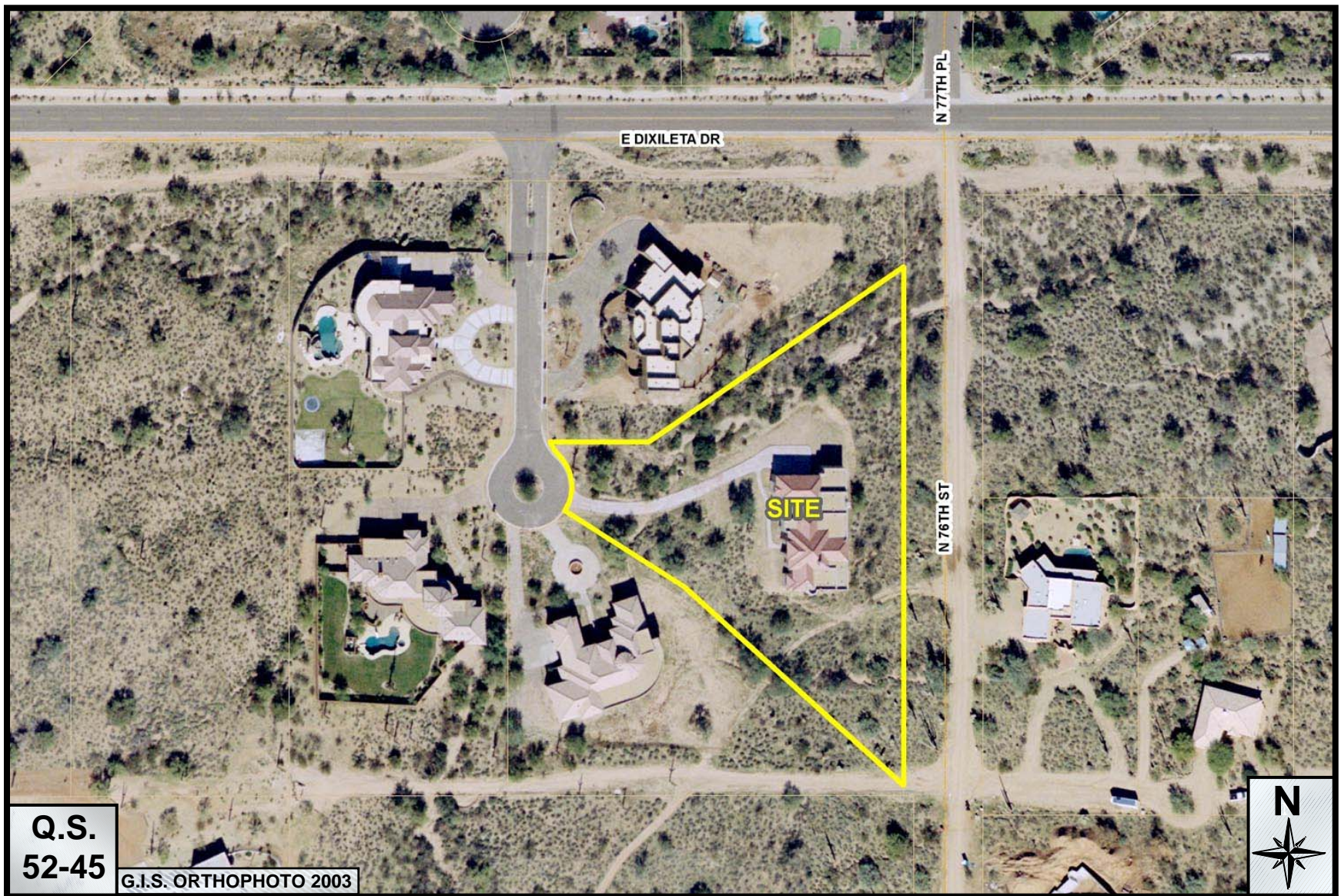
G.I.S. ORTHOPHOTO 2003

Groman Variance for Backyard

7-BA-2005

ATTACHMENT #2





Groman Variance for Backyard

**7-BA-2005**

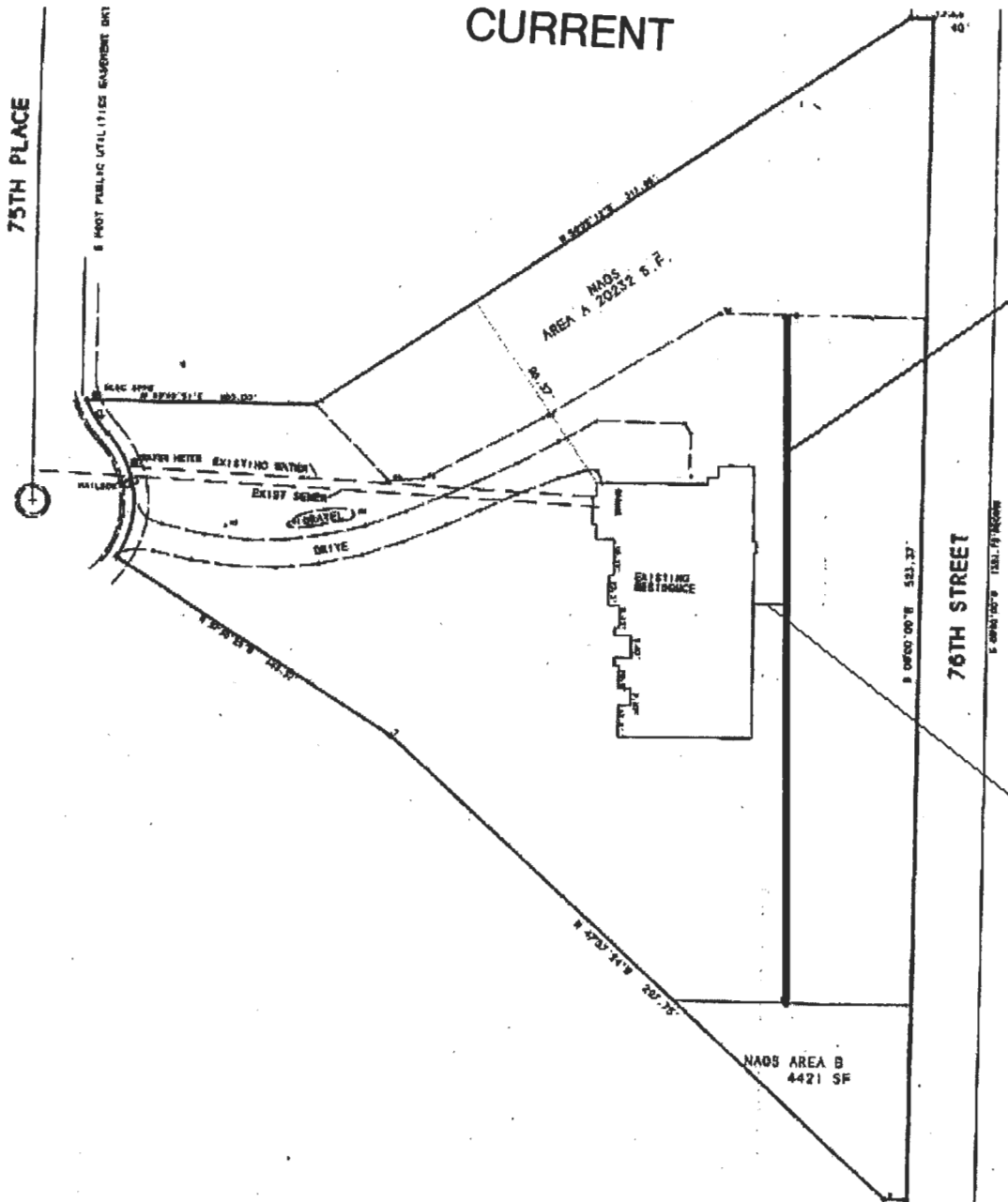
ATTACHMENT #2A



7-BA-2005

ATTACHMENT #3



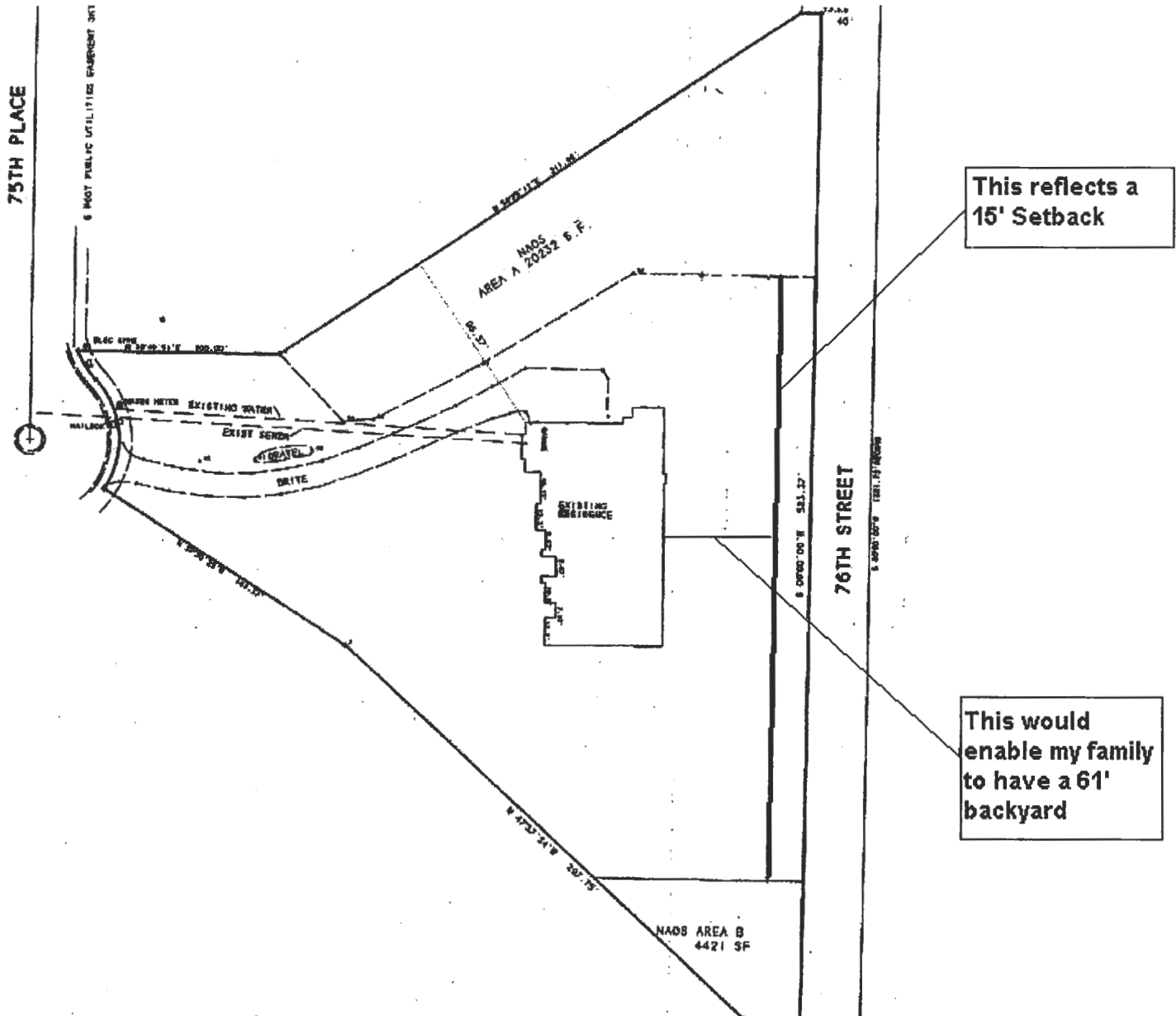


This reflects the 60' Setback

This allows us to have a 16' backyard



# PROPOSED



7-BA-2005  
7-1-05





DOUGLAS S. DIGGINS  
LANDSCAPE ARCHITECT  
6029 E. LAUREL BOULEVARD  
SCOTTSDALE, ARIZONA 85253



REVISIONS  
1. 11-10-04  
2. 11-10-04  
3. 11-10-04

CLIENT: KEVIN AND JENNIFER GROMAN  
PROJECT: GROMAN RESIDENCE  
ADDRESS: 28088 N. 75TH PLACE  
SCOTTSDALE, ARIZONA

TITLE: LANDSCAPE PLAN  
SCALE: 1"=10'-0"  
JOB: 0418  
DATE: 08-18-04

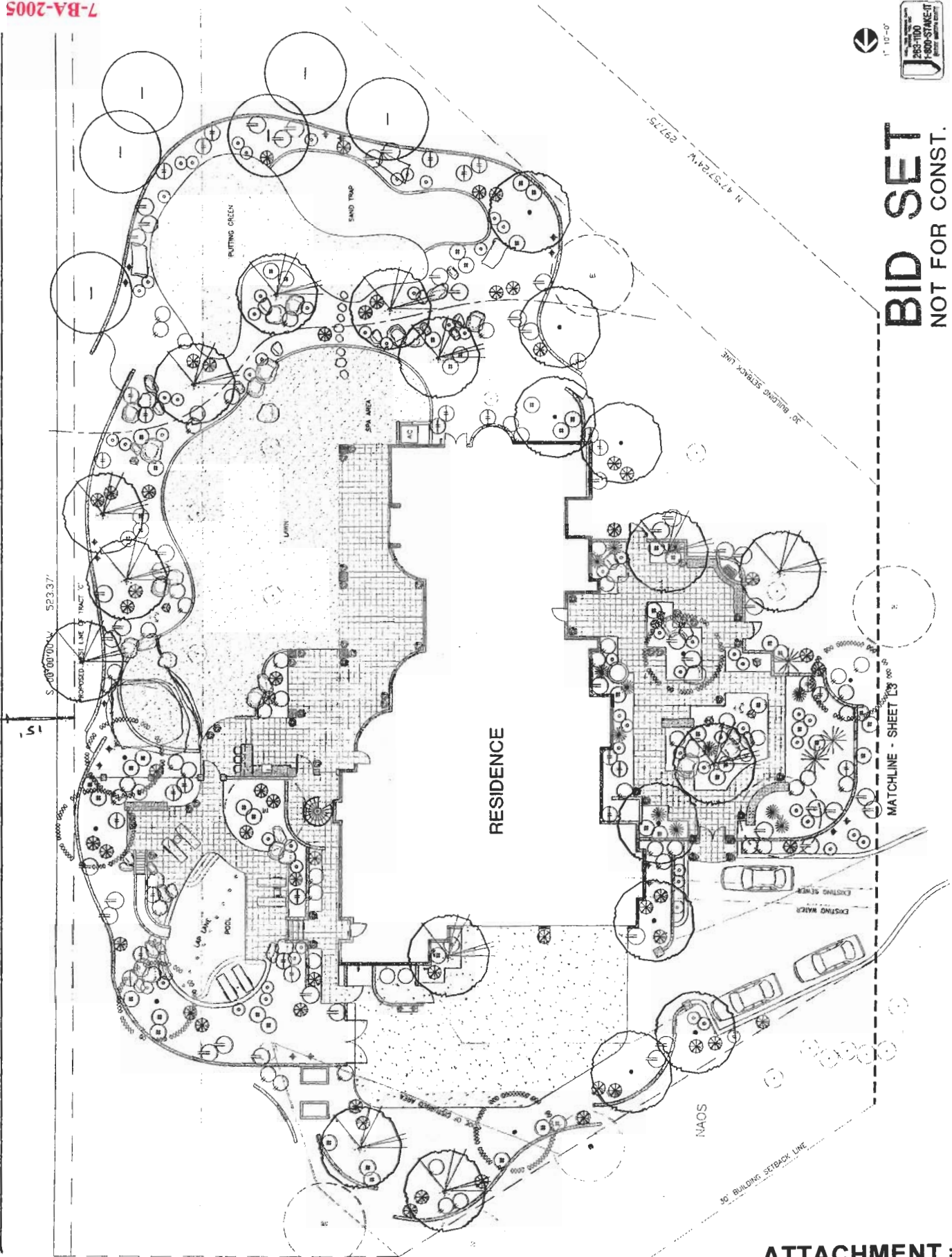
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L A N D S C A P E A R C H I T E C T U R E

7-BA-2005  
7-1-05



**BID SET**  
NOT FOR CONST.



ATTACHMENT #7